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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 407

A. C. WIDENHOUSE, INDIVIDUALLY, AND TRADING AS CAROLINA OIL COMPANY,

Petitioner,

versus

WAR EMERGENCY CO-OPERATIVE ASSOCIATION

PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioner above named respectfully prays this Court for a writ of certiorari directed to the United States Court of Appeals for the Fourth Circuit, to the end that this Court may review the decision which the said Court of Appeals has rendered in this case; and the Petitioner respectfully shows to the Court:

Summary Statement of the Matter Involved

This is a tort action which by stipulation and agreement of the parties was restricted to the determination of the question of agency under the doctrine of *respondeat*

superior. The determination of the agency question involves the application of Part II of the Interstate Commerce Act (49 U.S.C. 301 *et seq.*), and the applicable rules and regulations of the Interstate Commerce Commission issued pursuant thereto.

The pertinent facts of the case may be briefly stated as follows:

Respondent, War Emergency Co-operative Association, a South Carolina corporation, was a common carrier by motor vehicle duly licensed by the Interstate Commerce Commission to transport gasoline in interstate commerce (R. 69-70). Petitioner, A. C. Widenhouse, a resident of North Carolina, did not hold a permit or license to operate any equipment as a carrier by motor vehicle in interstate commerce (R. 52-53). Petitioner owned certain trucking equipment which he leased to respondent by a written lease or agreement executed February 10, 1943, which lease was in full force and effect on September 28, 1943 (R. 52). The lease contained the following provision: "The Lessee shall engage and use an experienced and qualified employee or employees in operating the trucking equipment herein described and shall direct, control and manage the use thereof as if the title to same was vested in it" (R. 52, 99).

The leased equipment was thereafter used exclusively in respondent's business for the transportation of petroleum products as a common carrier in interstate commerce (R. 53). It was equipped with permit number and license number issued to respondent by the Interstate Commerce Commission, and only the name of respondent, together with other indicia of ownership by respondent, appeared on the equipment (R. 52, 77). Under the terms of the lease, and as required by the regulations of the Interstate Commerce Commission, respondent procured liability insurance on the leased equipment in its name (R. 52, 53, 69).

All shipments were made under respondent's bills of lading (R. 54). Respondent collected all transportation charges arising from the use of the leased equipment (R. 55, 66). Orders for the delivery of petroleum products by the leased equipment were transmitted to the petitioner by respondent or to the petitioner directly by the shipper as requested by respondent (R. 54, 76).

The costs of operation of the leased equipment, together with the wages of the driver, were borne by the petitioner (R. 56, 71). Respondent remitted to the petitioner as rental for the leased equipment an amount equal to the transportation or tariff charges collected by respondent from its shippers arising from the use of the equipment, less a percentage retained by respondent and a fixed deduction for liability insurance placed by respondent (R. 56, 68-69).

Petitioner was the individual owner of a gasoline and oil business and maintained on premises owned by him a large bulk plant, located at Concord, North Carolina. The transportation and delivery of petroleum products to the bulk plant of petitioner, by equipment leased to respondent by petitioner, was handled in an identical manner as the transportation and delivery of petroleum products to other consignees (R. 54, 55, 71).

One R. A. Booth was engaged for the purpose of driving the leased equipment, and transacted no business for petitioner personally. The employment of Booth was acquiesced in by the respondent, as admitted in paragraph five of respondent's further answer (R. 5). His wages were paid by petitioner, from which wages deductions were made for withholding and social security taxes (R. 56, 62-63).

On September 28, 1943, petitioner's bulk gasoline plant was destroyed by a fire and explosion which occurred during the delivery of an interstate shipment of gasoline at the bulk plant by means of the leased equipment operated by R. A. Booth.

Petitioner and respondent have stipulated in the record that the negligence of R. A. Booth proximately caused the destruction of the property of petitioner, and that R. A. Booth was acting during the course of, and within the scope of, his employment, and while in the furtherance of his master's business (R. 51).

Petitioner instituted action against respondent in the Superior Court of Cabarrus County, North Carolina, to recover damages for the destruction of his property caused by the negligent act of the driver of the leased equipment, which action was removed by respondent to the District Court of the United States for the Middle District of North Carolina on the ground of diversity of citizenship. Jury trial was waived and upon findings of fact and conclusions of law (R. 82), the District Court entered judgment for petitioner and against respondent in the sum of $20,545.64 (R. 107).

On appeal by respondent, the United States Court of Appeals for the Fourth Circuit reversed the judgment of the District Court by holding that the driver of the leased equipment was not the agent of respondent but that he was the agent of petitioner, who was termed an independent contractor (R. 116).

The judgment of the Court of Appeals reversing the District Court is a final decision as to the issue, and denies petitioner the right to recover against respondent.

The question of law as to the agency of the driver of the leased equipment is the only issue dealt with and passed upon in all proceedings up to this point, other than the amount of damages which is not disputed.

Jurisdiction of This Court

Jurisdiction to review, through the procedure of certiorari, the decision of the Court of Appeals in this case is conferred upon this Court by the provisions of Title 28,

United States Code, Section 1254(1) (formerly 28 U.S.C. 347(a)).

It is contended by petitioner that the Court of Appeals in this case has decided an important question of Federal law which has not been, but should be, settled by this Court (Rule 38(5)(b)).

If it should be determined that the question is not one of Federal law, then the Court of Appeals has decided an important question of local law in a way probably in conflict with applicable local decisions (Rule 38(5)(b)).

Judgment was entered in this case by the United States Court of Appeals for the Fourth Circuit on August 14, 1948 (R. 120). The date of the filing of this petition is November 12, 1948.

Questions Involved

Under the provisions of Part II of the Interstate Commerce Act (49 U. S. C. 301 *et seq.*), and the rules and regulations of the Interstate Commerce Commission, is the driver of a motor vehicle leased to a franchise interstate motor carrier the agent of the carrier?

More particularly, did the Court of Appeals err in holding as a matter of law that the driver of the leased equipment was not the agent of respondent but was the agent of petitioner, who was termed an independent contractor?

Reasons Relied On for the Allowance of the Writ

1. The question involved has not been passed upon by this Court. The question is important to the entire interstate motor carrier industry and to the public, and the prominence of this expanding industry emphasizes the need of an authoritative and elucidating decision particularly with reference to the legal responsibility of an interstate franchise motor carrier in the operation of leased equipment.

2. Congress having entered the field by enacting the Motor Carrier Act (Part II, Interstate Commerce Act) and having delegated the duty to regulate common carriers by motor vehicle to the Interstate Commerce Commission (49 U. S. C. 304(1)), the question involved is of vital importance to such regulation with respect to the control over the qualifications of employees, and the safety of operation and equipment. Control can be exercised only through the regulation of franchise carriers who must have direction and control over their equipment and drivers.

3. The decision of the Court of Appeals as to the agency of the driver of equipment engaged in an interstate franchise operation, holding that the driver was not the agent of the franchise carrier, is a decision involving an important question of Federal law which has not been, but should be, settled by this Court. The decision is one within the policy of the law so dominated by the sweep of Federal statutes and regulations that legal relations which they affect must be deemed Federal questions governed by Federal law having its source in those statutes and regulations.

4. Should it be determined that the question involved is not a Federal one, then the decision of the Court of Appeals as to the agency of the driver of the equipment, holding that such driver was the agent of petitioner, who was termed an independent contractor, rather than the agent of respondent, decided an important question of local law in a way probably in conflict with applicable local decisions. The decision of the Court of Appeals is contrary to the decisions of the Supreme Court of North Carolina, a court of last resort, in the cases of *Brown* v. *Truck Lines* (227 N. C. 299, 42 S. E. (2d) 71) and *Wood* v. *Miller* (226 N. C. 567, 39 S. E. (2d) 608), as to the effect of Part II of the Interstate Commerce Act and the rules and regula-

tions of the Interstate Commerce Commission on the question involved.

5. The Court of Appeals erred in concluding and holding that the driver of the leased equipment, which driver's negligence proximately caused the damage to the property of petitioner, was the agent of petitioner who was termed an independent contractor rather than the agent of respondent. As a matter of law the driver of the leased equipment was the agent of respondent under Part II of the Interstate Commerce Act, the rules and regulations of the Interstate Commerce Commission, and by virtue of the franchise granted by the Interstate Commerce Commission, the lease agreement, and by the acquiescence of respondent in the employment of the driver.

The respondent is estopped to deny that the driver of the leased equipment was its agent by accepting its franchise, by the existence of the lease, by acquiescing in the employment of the driver, and by placing liability insurance coverage on the equipment in its name and paying the premiums therefor.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the Fourth Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 5749, *War Emergency Co-Operative Association, Appellant* v. *A. C. Widenhouse, individually, and trading as Carolina Oil Company, Appellee,* and that the said judgment of the United States Court of Appeals for the Fourth Circuit may be reversed by this Honorable Court, and that your peti-

tioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

A. C. WIDENHOUSE,
Petitioner.
LUTHER T. HARTSELL, JR.,
JOHN HUGH WILLIAMS,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 407

A. C. WIDENHOUSE, INDIVIDUALLY, AND TRADING AS CAROLINA OIL COMPANY,

Petitioner,

versus

WAR EMERGENCY CO-OPERATIVE ASSOCIATION

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I. Opinion of the Court Below

The opinion in the United States Court of Appeals for the Fourth Circuit is entitled on its docket, No. 5749, War Emergency Co-operative Association, Appellant, v. Marie Widenhouse, trading as Carolina Service Station No. 1, D. C. Beard, and A. C. Widenhouse, individually and trading as Carolina Oil Company, Appellees, and was decided August 14, 1948. The opinion is printed in full in the record (R. 114). This petition concerns the case of A. C. Widenhouse only.

II. Jurisdiction

1. Jurisdiction to review, through the procedure of certiorari, the decision of the Court of Appeals in this case is conferred upon this Court by the provisions of Title 28, United States Code, section 1254(1) (formerly 28 U. S. C. 347(a)).

2. The judgment to be reviewed was entered by the United States Court of Appeals for the Fourth Circuit on August 14, 1948 (R. 120).

3. The Court of Appeals has in this case decided an important question of Federal law which has not been, but should be, settled by this Court. (Supreme Court Rule 38(5)(b)). And if it should be determined that the question is not one of Federal law, then the Court of Appeals has decided an important question of local law in a way probably in conflict with applicable local decisions (Rule 38 (5)(b)).

III. Statement of the Case

A concise statement of the relevant facts appears in the petition to which this brief is annexed under the heading of "Summary Statement of the Matter Involved", and in the interest of brevity, the statement is not being repeated.

IV. Specification of Errors

1. The Petitioner assigns as error the reversal by the Court of Appeals of the judgment which was rendered in the District Court.

2. The Court of Appeals erred in concluding and holding that the driver of the leased equipment, whose negligence proximately caused the damage to the property of petitioner, was the agent of petitioner who was termed an independent contractor rather than the agent of respondent,

an authorized carrier by motor vehicle in interstate commerce.

V. Argument

This is a tort action which by stipulation and agreement of the parties was restricted to the determination of the question of agency under the doctrine of *respondeat superior*. Thus the question of law as to the agency of the driver of the leased equipment is the only issue presented for decision.

Summary

The decision of the court below should be reviewed and reversed for the following reasons: (A) The question involved is important to the entire interstate motor carrier industry and to the public; (B) It is of vital importance in the regulation of the industry by the Interstate Commerce Commission with respect to control over the qualifications of employees and the safety of operation and equipment; and (C) it is a Federal question which has not, but should be, passed upon by this Court. (D) If the question is not determined to be a Federal one, the decision of the court below is probably in conflict with applicable local law. (E) The court below erred in holding that the driver of the leased equipment was not the agent of the authorized carrier as a matter of law. (F) The respondent is estopped to deny that the driver was its agent.

A. *The question is important to the motor carrier industry and to the public.*

The growth of the motor carrier industry impelled Congress to enact the Motor Carrier Act of 1935 (Part II, Interstate Commerce Act, 49 U. S. C. 301 *et seq.*). Safety of operation was constantly before the Committees and Congress in their study of the situation. It is clear that

Congress intended to exercise its powers in the nontransportation phases of motor carrier activity. *United States* v. *American Trucking Association,* 310 U. S. 534, 538.

It has become the increasing practice in the motor carrier industry for carriers to augment their over-the-road equipment by leasing vehicles from non-franchise owners. The problem has become of sufficient consequence to cause the Interstate Commerce Commission to institute a series of hearings on the matter, which hearings began on October 11, 1948. The question of the legal responsibility of an interstate franchise motor carrier for the operation of leased equipment has become important to the entire industry and to the public which is affected by the safety of its operation.

B. *The question involved is of vital importance to the Interstate Commerce Commission in its control of the motor carrier industry.*

Congress has imposed upon the Interstate Commerce Commission the duty of regulating the interstate motor carrier industry.

Title 49 U. S. C., Section 304 (a)(1), reads in part as follows:

> "It shall be the duty of the Commission—(1) To regulate common carriers by motor vehicle * * *, and to that end the Commission may establish reasonable requirements with respect to * * * qualifications * * * of employees, and safety of operation and equipment".

Pursuant to this delegation of authority the Commission has adopted rules and regulations governing the qualifications of employees, and safety of operation and equipment.

Control can be exercised by the Commission only through the regulation of franchise carriers who must have direction

and control over their equipment and drivers. The Commission's jurisdiction is limited to employees of authorized carriers. *Boutell* v. *Walling*, 327 U. S. 463.

The decision of the Court of Appeals in this case nullifies the control by the Commission over certain drivers of vehicles operating in interstate commerce under franchise authority issued by the Commission.

C. *The agency of the driver of leased equipment engaged in an interstate franchise operation is a Federal question.*

Congress having entered the field by enacting Part II of the Interstate Commerce Act, and having delegated the duty to regulate common carriers by motor vehicle to the Interstate Commerce Commission, and the Commission having promulgated rules and regulations pursuant thereto, the issue of the agency of the driver of leased equipment engaged in an interstate franchise operation is a Federal question.

Ordinarily questions of tort liability are determined by local law. *Hudson* v. *Moonier*, 304 U. S. 397. The cited case and the doctrine of *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, do not apply to the instant case, because neither involved the application of Federal statutes and regulations. Furthermore, all questions of tort liability in the instant case have been resolved and only the question of agency as a matter of law is at issue. The doctrine that Federal courts should follow State decisions on matters of general jurisprudence is inapplicable to those areas of judicial decision within which the policy of the law is so dominated by the sweep of Federal statutes that legal relations which they affect must be deemed governed by Federal law having its source in those statutes, rather than by local law. *Sola Elec. Co.* v. *Jefferson Elec. Co.*, 317 U. S. 173, 176; *Deitrick* v. *Greaney*, 309 U. S. 190, 200, 201; *Jackson County*

v. *United States,* 308 U. S. 343, 349, 350; *O'Brien* v. *Western U. Teleg. Co.* (1 Cir.), 113 F.(2d) 539, 541.

The decision of the Court of Appeals as to the agency of the driver of equipment engaged in an interstate franchise operation, holding that the driver was not the agent of the franchise carrier, is a decision involving an important question of Federal law which has not been, but should be, settled by this Court.

D. *The decision of the court below is in conflict with local law.*

The cause of action arose in the State of North Carolina. The Supreme Court of North Carolina has expressed itself on the question involved in the case of *Brown* v. *Truck Lines,* 227 N. C. 299, 42 S. E. (2d) 71. Portions of the opinion are quoted:

> "Here the defendant . . . was a motor carrier of goods in interstate commerce, operating under authority of a certificate or license issued by the Interstate Commerce Commission. Transportation in interstate commerce by an interstate motor carrier is subject to the applicable provisions of the Federal statutes governing such carriage, and the rules, regulations and requirements of the Interstate Commerce Commission. 49 U. S. C. A., secs. 301, et seq. . . . The operation of the truck was in law under the supervision and control of the interstate franchise carrier and could be lawfully operated only by those standing in the relationship of employees to the authorized carrier . . . . The defendant Motor Lines could not contract for the use of a truck or employ an independent truck owner not a holder of certificate or permit from the Interstate Commerce Commission (49 U. S. C. A., sec. 311), except under its own license plates, and by virtue of its franchise.
>
> "The transportation of goods in interstate commerce by motor vehicles was required to be under the

rules and regulations of the Interstate Commerce Commission, and the Brown truck could only have been used in such transportation by the defendant franchise carrier as one of its fleet of trucks under its license plates. Hence it would seem to follow that control of the operation for the period of the lease was given to the licensed carrier, and that the owner-driven truck was in contemplation of law in its employ and the driver for the trip stood on the relationship of its employee. . . .

"The act of the defendant in accord with the provisions of the lease in placing its own license plates on Brown's truck under the circumstances disclosed, thus giving it the status and holding it out as its own vehicle for the purposes of this trip, a procedure which alone authorized its operation, must be regarded as an assumption of such control as would defeat the plea of non-liability for injury to the driver on the ground of independent contractor. Control of the employer must be completely surrendered to relieve liability."

Reference is also made to the case of *Wood* v. *Miller*, 226 N. C. 567, 39 S. E. (2d) 608.

E. *The court below erred in holding that the driver of the leased equipment was not the agent of the carrier as a matter of law.*

Respondent was a common carrier by motor vehicle in transporting petroleum products in interstate commerce. It was the holder of a certificate of convenience and necessity from the Interstate Commerce Commission and was subject to the provisions of Part II of the Interstate Commerce Act and all rules and regulations of the Interstate Commerce Commission. Respondent could not contract for the use of a truck or employ an independent truck owner not a holder of a certificate or permit from the Interstate Commerce Commission, except under its own license plates, and by virtue of its franchise (49 U. S. C. 311).

On August 13, 1936, the Commission issued Administrative Ruling No. 4, as follows:

> "The lease or other arrangement by which the equipment of an authorized operator is augmented must be of such a character that the possession and control of the vehicle is, for the period of the lease, entirely vested in the authorized operator in such a way as to be good against all the world, including the lessor; that the operation thereof must be conducted under the supervision and control of such carrier; and that the vehicle must be operated by persons who are employees of the authorized operator, that is to say, who stand in the relation of servant to him as master."

This ruling has been cited in the following cases: *Interstate Commerce Commission* v. *F. and F. Truck Leasing Co., et al.* (Case No. 2593, U. S. D. C. of Minn., 4th Division, decision June 2, 1948); *Brown* v. *Truck Lines,* 227 N. C. 299, 307, 42 S. E. (2d) 71, 75; *Steffens* v. *Continental Freight Forwarders Co.,* 66 Ohio App. 534, 35 N. E. (2d) 734.

As a common carrier respondent was required to and did exercise direction and control over its vehicles and held itself out to the general public as engaging in the operation for which it received its franchise. Respondent could not operate under its franchise through independent contractors. *Thompson* v. *United States,* 321 U. S. 19; *O'Malley* v. *United States,* 38 F. Supp. 1; *Moore* v. *United States,* 41 F. Supp. 786, affirmed 316 U. S. 642.

The equipment lease (R. 52, 97) placed the direction and control in respondent "as if title to same was vested in it". The lease further provided that "lessee (respondent) shall engage and use an experienced and qualified employee or employees in operating the trucking equipment. . . ."

The lease was in full force and effect at the time the cause of action arose (R. 52). Respondent alleged the

existence of the lease in its answer (R. 4), and its existence has not been denied.

Pursuant to the lease, the equipment was used exclusively by respondent in its operation as a common carrier (R. 53). The lessor (petitioner) did not hold a certificate or license from the Interstate Commerce Commission to operate any equipment in interstate commerce (R. 52-53). I. C. C. Permit Number and other indicia of ownership by respondent were placed on the leased equipment in accordance with the rules and regulations of the Interstate Commerce Commission (49 U. S. C. 324).

The driver was engaged for the sole purpose of operating the leased equipment. His employment was acquiesced in by the respondent as set forth in paragraph five of respondent's further answer (R. 5), which was introduced in evidence (R. 82). Although the wages of the driver were paid by petitioner as a matter of convenience, this did not alter the legal relationship of the parties.

All shipments were made under respondent's bills of lading, and all transportation charges were paid directly to respondent by the shippers, including all shipments to petitioner doing business as Carolina Oil Company (R. 54-55). Thus petitioner occupied the same position as any other consignee or member of the public in the instant delivery. Orders for delivery of petroleum products by the leased equipment were transmitted to the petitioner by the respondent or to the petitioner directly by the shipper, as a matter of convenience, as requested by the respondent (R. 54, 76).

Under Sec. 315 of Part II of the Interstate Commerce Act (49 U. S. C. 315) no certificate or permit shall be issued to a motor carrier or remain in force, unless such carrier complies with the rules and regulations of the Interstate Commerce Commission regarding the filing and approval of liability insurance to cover injury or damage to

persons or property of others "resulting from the negligent operation, maintenance, or use of motor vehicles under such certificate or permit". Liability insurance was procured and placed by respondent in its name, as required by the regulations and under the terms of the equipment lease (R. 52, 97).

It is contended by the petitioner that by virtue of Part II of the Interstate Commerce Act, the rules and regulations of the Interstate Commerce Commission, the existence of the franchise, the lease agreement, the acquiescence of the respondent in the employment of the driver, and the course of business dealings, as above set forth, the driver of the leased equipment was the agent of respondent as a matter of law.

The undisputed evidence shows that at no time did respondent relinquish its exclusive right and power to control, direct and interfere in the operation of the leased equipment (R. 57, 71, 72). The duty to exercise this control and direction arose under respondent's franchise. The right and power to do so was granted by the equipment lease. Therefore, as a general principle of law, the existence of respondent's control and direction over the operation of the leased equipment and its responsibility to do so under its franchise completely negate a conclusion that petitioner was an independent contractor.

F. *The respondent is estopped to deny that the driver was its agent.*

It would be unconscionable and inequitable to permit respondent to receive the benefit of its franchise and deny in this case that it operated in accordance with the rules and regulations of the franchise authority, to agree by lease to assume the direction and control of the equipment as if title was vested in it and deny that it exercised direction and control, to acquiesce in the employment of the driver

of the equipment in its behalf and deny that the driver was its agent, to agree to and place liability insurance on the equipment in its name and deny to the other party to the agreement the benefit of this insurance.

It is earnestly contended by petitioner that by virtue of the franchise, the responsibility assumed thereby, the existence of the equipment lease, the acquiescence in the employment of the driver of the equipment, and the placing of liability insurance on the equipment as agreed by the lease and required by Federal law, respondent is estopped to deny that the driver was its agent.

Conclusion

For the reasons set forth in the petition for writ of certiorari and in this brief, and in order that the petitioner may not be deprived of his right under the law, it is respectfully submitted that the supervisory powers of this Court should be exercised to correct the erroneously grounded decision of the Court of Appeals; and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Court of Appeals and finally reverse it and affirm the judgment of the District Court.

Respectfully submitted,

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